



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

COPY MAILED

JAN 3 1 2005

OFFICE OF PETITIONS

BLAKE, CASSELS & GRAYDON, LLP
45 O'CONNOR ST., 20TH FLOOR
OTTAWA ON K1P 1A4 CA CANADA

In re Application of :
Zhi Yuan Wang :
Application No.: 10/764,556 :
Filed: January 27, 2004 :
Attorney Docket No.: 101886/9 :
ON PETITION

This a decision on the petition under 37 CFR 1.182 filed November 18, 2004.

The petition is **dismissed**.

The application was filed on January 27, 2004. The application included two sheets of drawings, however; none of the figures encompassed in the drawings were labeled "Figure 1" as identified in the specification. Accordingly, on October 13, 2004, the Initial Patent Examination Division mailed the Notice stating that the application had been accorded a filing date of January 27, 2004, but that Figure 1 appeared to have been omitted.

In response, the present petition was filed. Petitioner therein argued that Figure 1 accompanied the application papers; however, the USPTO removed Figure 1 mistakenly pursuant to a preliminary amendment that only required replacement of Figure 2 and 3.

The arguments have been considered, but are not persuasive. The Patent and Trademark Office file is the official record of the papers originally filed in this application. A review of the application file reveals that two sheets of drawings were filed on January 27, 2004, but no figures labeled Figure 1 were found among the two sheets of drawings originally filed. There is nothing in the file record to suggest a mistake was made in effecting the preliminary amendment that was filed on the same day as the subject application. The application transmittal sheet indicates that new formal drawings were filed on January 27, 2004. It is, therefore, more likely that all that was received on January 27, 2004, was scanned into the electronic file and unlikely that the USPTO deliberately did not scan Figure 1 into the electronic file in an effort to comply with the preliminary amendment. Petitioner must therefore establish that three sheets of drawings were received on January 27, 2004. The only *prima facie* evidence of the USPTO's receipt of three sheets of drawings is an Office date-stamped postcard receipt whereby the USPTO acknowledges receiving three sheets of drawings on January 27, 2004. No such evidence accompanied the petition; therefore, petitioner has not overcome the presumption that the official file record is accurate.

It is noted that petitioner indicates that Figure 1 can be found in the parent application. A review of the subject application did not reveal a proper incorporation by reference statement in the application transmittal or specification. Accordingly, the Office will not look to the parent application to provide any items that may have been omitted from the subject divisional application on filing.

The petition is dismissed.

Of course, applicant may submit Figure 1 of the drawings in the form of an amendment for consideration by the examiner to determine whether the drawing contains new matter compared to the original specification and drawings filed January 27, 2004. See 37 CFR 1.121.

The petition fee of \$130.00 will be charged to deposit account 50-1456.

The application is being returned to the Office of Initial Patent Examination for further processing with the presently accorded filing date of January 27, 2004, using the 2 sheets of drawings filed January 27, 2004.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petition Attorney
Office of Petitions